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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 MARLON OLIVAS,

10 Petitioner,

11 vs.

12 BRIAN E. WILLIAMS, et al.,

13 Respondents.
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Case No. 2:10-CV-00571-GMN-(RJJ)

ORDER

15 Petitioner has paid the filing fee (#3). The court has reviewed the petition pursuant
16 to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The
17 petition is second or successive, and petitioner requires authorization from the United States Court
18 of Appeals for the Ninth Circuit before this court can consider the petition. 28 U.S.C. § 2244(b).
19 Pursuant to Circuit Rule 22-3(a), the court will transfer the action to the court of appeals.

20 Petitioner alleges that he was convicted of battery upon a police officer with the use
21 of a deadly weapon, assault upon a police officer with the use of a deadly weapon, and mistreatment
22 of a police animal, in the Eighth Judicial District Court of the State of Nevada, Case No. C179963.
23 Petitioner, with the assistance of retained counsel, challenged the same judgment of conviction in
24 this court in Olivas v. Neven, Case No. 2:04-CV-01643-JCM-(PAL). The court dismissed that
25 action as untimely, petitioner appealed, and the court of appeals affirmed. “[D]ismissal of a section
26 2254 habeas petition for failure to comply with the statute of limitations renders subsequent
27 petitions second or successive for purposes of . . . 28 U.S.C. § 2244(b).” McNabb v. Yates, 576
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1 F.3d 1028, 1030 (9th Cir. 2009). Petitioner must first obtain authorization from the court of appeals
2 before this court can consider his petition. 28 U.S.C. § 2244(b)(3).

3 IT IS THEREFORE ORDERED that the clerk of the court file the petition for a writ
4 of habeas corpus pursuant to 28 U.S.C. § 2254.

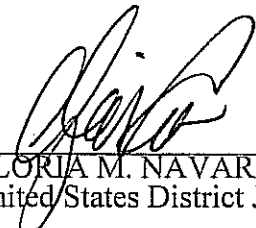
5 IT IS FURTHER ORDERED that, pursuant to Circuit Rule 22-3(a), the clerk of the
6 court shall refer this action to the United States Court of Appeals for the Ninth Circuit.

7 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto,
8 Attorney General for the State of Nevada, as counsel for respondents.

9 IT IS FURTHER ORDERED that the clerk shall electronically serve respondents
10 with a copy of the petition and a copy of this order. No response by respondents is necessary.

11 IT IS FURTHER ORDERED that the clerk of the court shall administratively close
12 this action.

13 DATED: *June 4th 2010*

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18 GLORIA M. NAVARRO
19 United States District Judge
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